

Initial Statement of Reasons

Title 2. Administration Division 7. Secretary of State Chapter 8.5. Business Entity Names

Adding Sections 21000 through 21009, Title 2 California Code of Regulations (Business Entity Names)

1. Specific Purpose of the Amendments.

The Secretary of State may not file a document with a proposed business entity name or reserve a business entity name if it is the same as or too similar to an existing business entity name or if the proposed name is misleading to the public, or, in the case of a limited partnership subject to the Uniform Limited Partnership Act of 2008, if the proposed name is not distinguishable on the record. The purpose of the proposed regulations is to interpret these broad statutory standards, contained in Corporations Code sections 201, 2106, 5122, 7122, 9122, 12302, 13409, 15612, 15901.08, 15909.05 and 17052, that govern the Secretary of State's determinations of the availability of business entity names and to provide specific guidelines for the application of those statutes.

The guidelines are intended to assist the public in selecting business entity names prior to filing documents with the Secretary of State and to provide the public with more certainty that the proposed business entity names submitted to the Secretary of State for reservation and/or filing are acceptable under the statutory standards. The guidelines will also assist Secretary of State staff in determining if proposed business entity names are acceptable and in ensuring more consistency in the application of the statutory standards.

Specifically,

- 1) Section 21000 is intended to provide some rules of general application regarding items such as the use of alphabetic characters, numbers, fonts and symbols.
- 2) Section 21001 is intended to define terms that are used in the proposed regulations.
- 3) Section 21002 is intended to interpret the specific application of Corporations Code sections 201(b), 5122(b), 7122(c), 9122(b), 12302(b), 13409, 15612(c) and 17052(c) and to provide specific guidelines in determining if a proposed business entity name is the same as an existing business entity name or if a proposed business entity name resembles an existing business entity name so closely as to tend to deceive.
- 4) Section 21003 is intended to interpret Corporations Code sections 201(b), 5122(b), 7122(c), 9122(b), 12302(b), 13409, 15612(c) and 17052(c) and provide specific

guidelines in determining if a proposed business entity name is substantially similar to an existing business entity name.

- 5) Section 21004 is intended to interpret Corporations Code sections 201(b), 5122(b), 7122(c), 9122(b), 12302(b), 13409, 15612(c) and 17052(c) and provide guidelines relating to names that are substantially similar to an existing business entity name..
- 6) Section 21005 is intended to interpret Corporations Code sections 201(b), 5122(b), 7122(b), 7122(c), 9122(b), 12302(b), 13409, 15612(c) and 17052(c) and provide guidelines relating to the business entity names that are likely to mislead the public.
- 7) Section 21006 is intended to interpret Corporations Code sections 201(c), 5122(c), 7122(d), 9122(c), 12302(c), 13409, 15613 and 17053 to provide guidelines relating to the reservation of business entity names that may require consent prior to filing and to verbal opinions by Secretary of State staff.
- 8) Section 21007 is intended to interpret Corporations Code sections 201, 5122, 7122, 9122, 12302, 15612, 15901.08, 15909.05 and 17052 to provide additional guidelines relating to proposed business entity names that are the same as an existing business entity name or that resemble an existing business entity name so closely as to tend to deceive.
- 9) Section 21008 is intended to interpret Corporations Code sections 201, 5122, 7122, 9122, 12302, 15612, 15901.08 and 17052 to provide a list of factors not considered when determining if a proposed business entity name is the same as an existing business entity name, resembles an existing business entity name so closely as to tend to deceive, or is distinguishable on the record.
- 10) Section 21009 is intended to interpret Corporations Code section 15901.08 and to provide guidelines relating to the proposed names of limited partnerships governed by the Uniform Limited Partnership Act of 2008.

2. Necessity.

The Secretary of State routinely returns documents unfiled because the proposed business entity names are unavailable under the statutory standards. These regulations are needed to provide specific guidelines for the public in selecting business entity names prior to filing documents with the Secretary of State. These regulations will provide the public with more certainty that proposed business entity names submitted to the Secretary of State for reservation and/or filing will be acceptable under the statutory standards and will reduce the number of documents that are returned unfiled by the Secretary of State.

Specifically,

- 1) Section 21000 is needed in order to provide some outside limitations on character use that is required by the technical limits of the Secretary of State database and practical application of comparing names for conflict. The inclusion of Subsection (c) is needed to

make clear that each business entity type has separate name availability statutes that only permit conflict comparison to like business entities.

2) Section 21001 is needed to define terms for simplification and efficient application of the proposed regulations.

3) Section 21002 is needed to provide some factors and examples for the public and the Secretary of State's staff to consider when determining what will, and will not, distinguish a proposed name from being the same as an existing business entity name or resembling an existing business entity name so closely as to tend to deceive.

4) Section 21003 is needed to provide some factors and examples for the public and the Secretary of State to consider when determining what will, and will not, distinguish a proposed name from being substantially similar to an existing business entity name.

5) Section 21004 is needed to provide some assurance that written consent to use a substantially similar name is authentic and properly authorized. Section 21004 is also needed to provide guidance for businesses when submitting proposed names that are substantially similar to an existing name.

6) Section 21005 is needed to provide some factors and examples for the public and the Secretary of State to consider when determining if a proposed business entity name is likely to mislead the public.

7) Section 21006 is needed to clarify that proposed business entity names that would require consent upon filing may still be reserved prior to filing and to clarify that verbal opinions by Secretary of State staff are not authorized under any statutory authority.

8) Section 21007 is needed to provide additional factors and examples for the public and the Secretary of State to consider when determining what will, and will not, distinguish a proposed name from an existing name.

9) Section 21008 is needed to identify and clarify certain factors that fall outside the governing statutes and will not be considered in determining whether a proposed name is or is not the same as an existing business entity name, resembles an existing business entity name so closely as to tend to deceive, or is or is not distinguishable on the record.

10) Section 21009 is needed to provide specific guidelines for the public in selecting limited partnership names under the new statutory standards relating to the availability of names under the Uniform Limited Partnership Act of 2008. Effective January 1, 2008, the Uniform Limited Partnership Act of 2008 changed the name availability standards for all limited partnerships governed by that Act. The name availability standards under the Uniform Limited Partnership Act of 2008 are significantly different from the statutory standards applicable to limited partnerships that are not yet governed under the Uniform Limited Partnership Act of 2008. The new limited partnership statutory name availability standards are also significantly different from the name statutes governing corporations

and limited liability companies. This section will assist the public in selecting names for limited partnerships and is needed to help limit or reduce the number of documents returned for name conflicts.

3. Technical, Theoretical, and/or Empirical Study, Reports, or Documents.

While the Secretary of State examined the business entity name statutes and regulations of several other states, the Secretary of State did not rely on any technical, theoretical or empirical studies or reports in proposing these regulations.

4. Reasonable Alternatives to the Regulation and the Office's Reasons for Rejecting those Alternatives.

The following alternative to the proposed regulations was presented and is summarized below. After consideration of the alternative, the Secretary of State has determined that no identified alternative would be as effective in carrying out the purposes for which the regulations are proposed.

Alternative: Creation of a new protected business names database that would require proof of a legal right to use the business entity name prior to being recorded in the protected name database. Require consent from the owner of the protected business entity name for any proposed business entity name that conflicted with the protected name.

The proposed alternative exceeds the authority the Secretary of State has to promulgate regulations governing the names of business entities. To the extent the proposed alternative may be modified so that it does not exceed the authority of the Secretary of State, the proposed alternative is not as effective in carrying out the purposes of the regulations. The statutes governing the availability of business entity names permit the Secretary of State to reject a proposed name only to the extent the proposed name conflicts with the name of an active business entity of the same type on record with the Secretary of State or a name that is reserved for use by the same type of business entity. The current statutes do not permit the Secretary of State to reject a proposed business entity name based on the existence of legal protections outside the Corporations Code (such as trademark registrations). In addition, the Secretary of State may not consider proposed business entity name conflicts with the names of different entity types. To the extent the proposed alternative may be modified to fall within the Secretary of State's authority, the alternative does not provide any guidance in interpreting the business entity name statutes and is not as effective as the proposed regulations in assisting the public in identifying what proposed business entity names are in conflict with existing business entity names.

Except as provided above, no other alternatives have been presented to or considered by the Secretary of State's office.

5. Reasonable Alternatives to the Proposed Regulatory Action Would Lessen Any Adverse Impact on Small or Other Businesses.

No adverse impacts that the regulatory action would have on small businesses have been identified. To the extent the regulatory action proposed may facilitate conducting business in California, all businesses may benefit.